

newspaper-television station owner to exercise monopoly power or somehow control the marketplace of ideas seem as antiquated as a television set or computer from 1975 would be today.

Among the marketplace changes highlighted by the NAA, a number warrant special mention:

- the number of licensed television stations has grown by more than 50 percent, with the majority of U.S. television households in markets served by 10 or more stations. This growth has largely occurred in the UHF band - the number of commercial UHF stations has more than tripled since 1975, growing from 192 in 1975 to 619 by the end of 1997;¹²
- the number of licensed radio stations in the U.S. has increased by nearly 50 percent since 1975, including doubling the number of FM stations. Driven by this increase in the number of stations, there has been a dramatic increase in program formats -- the number of formats tracked by Broadcasting & Cable grew from just 15 in 1982 to 91 by the end of 1996;¹³
- the increase in the number of licensed television stations has been accompanied by the emergence of a fourth major over-the-air network (Fox) and the start-up of three other over-the-air networks (WB, UPN and the soon-to-be-launched Pax Net);
- cable television has forever changed the way in which most Americans receive their video programming. Cable television passes almost 97 percent of all U.S. households with over 66 percent of those households now subscribing. This compares to the 17 percent penetration rate at the time the Rule was adopted. In total, the number of television households subscribing to cable has jumped from approximately 8.5 million in 1975 to approximately 64 million in 1997 (representing nearly an 8-fold increase);¹⁴

¹² 1997 Broadcasting & Cable Yearbook at I-45.

¹³ FCC Mimeo, Broadcast Station Total as of March 31, 1997 (April 7, 1997); 1996 Broadcasting & Cable Yearbook, at B-671.

¹⁴ Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fourth Annual Report ("1998 Annual Report"), FCC 97-423, ¶¶ 14-15 (Jan. 13, 1998).

- in addition to the increase in licensed over-the-air stations, over 58 percent of cable subscribers are served by systems with 54 or more channels while an additional 40 percent of cable subscribers (equaling approximately 25.6 million television households) are served by systems with 30 or more channels).¹⁵ This compares to the market in 1975 when most television markets received 5 or fewer channels of video programming. Virtually all these systems also have public access channels -- channels that permit members of the public to express their views on local issues of concern;
- the increase in the number of available cable channels has led to the proliferation of national and regional cable networks — numbering 126 by the end of 1996;¹⁶ these basic networks, which for all practical purposes did not exist at the time the Rule was adopted, have increasingly taken viewers away from the over-the-air industry -- accounting for over 36 percent of total household viewing hours in the 1996-97 season.¹⁷ The trade press recently highlighted yet another week where more households tuned into basic cable networks than to the Big Four broadcast networks,¹⁸
- direct broadcast satellites, non-existent at the time the Rule was adopted, offer multiple channels of programming (typically well in excess of 100) to an estimated 5.1 million subscribers as of June 1997;¹⁹
- VCR penetration exceeded 80 percent as of the end of 1997 and videocassette rentals and sales revenues exceeded \$16 billion for that period. By contrast, the home video industry was virtually non-existent in 1975;
- almost overnight, the Internet has emerged as a source of virtually limitless information, with penetration estimated at 30 percent nationally today and projected to increase rapidly in the next 5 years. No report of today's business news is complete without the announcement of some new

¹⁵ 1998 Annual Report, ¶¶ 15-17.

¹⁶ 1998 Annual Report, ¶¶ 18-19.

¹⁷ Id.

¹⁸ See "Basic Cable Tops Big Four," Broadcasting & Cable Daily Fax, July 1, 1998 (during week of June 22-28, more homes tuned to programs on basic cable networks than from the Big Four networks).

¹⁹ 1998 Annual Report, ¶¶ 55-56 and Table C-3.

investment by a large company seeking to better position itself in tomorrow's Internet-dominated world;²⁰

- traditional and modern media have converged as newspapers are published and programming is broadcast on-line, creating a world where content from all media (print, broadcasting, on-line) have merged into a single platform.

These changes, many of which have been acknowledged by the Commission in liberalizing or eliminating other structural ownership rules designed to enhance diversity and/or competition, should also be recognized in this proceeding.²¹ As the Commission staff recognized as early as 1991, "in the new reality of increased competition[,] regulations imposed in a far less competitive environment to curb perceived market power or concentration of control over

²⁰ See, e.g., "All Clicks head to Disney," Broadcasting & Cable Daily Fax, June 19, 1998 (documenting Disney's recent-investment in Infoseek, a move designed to "leverage Disney entertainment, news and sports assets online with the Infoseek search engine"); "Road Runner makes deals and speeds up installs," Electronic Media, June 20, 1998 (describing separate \$212.5 million investments by Microsoft and Compaq in the Road Runner high speed Internet service).

²¹ The Commission has "found that each of these new services also were contributing significantly to the diversity of information available to the public," and that

in terms of viewpoint diversity, the market includes a wide variety of active, energetic organs engaged in the dissemination of ideas, and that these instruments include not simply television and radio, also cable, video cassette recorders, newspapers, magazines, books, and when they are in operation, MDS, STV, LPTV, and DBS, all of which should be considered when evaluating diversity concerns.

Amendment of Section 73.3555 [formerly Sections 73.35, 73.240 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcasting Stations, 100 F.C.C. 2d 17, 26 (1984) ("1984 Multiple Ownership Report"). The Commission has also stated that "it is unrealistic to consider broadcast television station ownership in isolation when analyzing outlet diversity, and we propose to take other media into more specific account in assessing diversity." Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rule Making, 10 FCC Rcd. 3524, ¶ 64 (1995). Even the Supreme Court has commented that "[w]ith the capacity to carry dozens of channels and import distant programming signals via satellite or microwave relay, today's cable systems are in direct competition with over-the-air broadcasters as an independent source of television programming." Turner Broad. Sys. Inc. v. FCC, 512 U.S. 622, 627 (1994).

programming are no longer justified and may impede the provision of broadcast services."²² The Commission should liberalize the Rule to permit over-the-air broadcasters and newspapers to pursue efficient ownership combinations in today's multi-media environment, combinations that in the largest markets pose no threat to competition for advertising revenue or to the marketplace of ideas. As demonstrated above, the failure to take such action would raise serious constitutional concerns because the Rule singles out newspapers and prevents their full participation in the media marketplace.

In considering the impact of these new technologies, the Commission should not focus on whether all of them are available to every American. Instead, the Commission should focus on whether these new technologies provide a competitive substitute for over-the-air television. If the over-the-air television industry is to remain economically competitive and continue to provide high quality entertainment, news, children's and public affairs programming, it must be able to compete for the attention of all Americans, not just for the attention of those unable to afford cable or DBS or the Internet. Two recent articles underscore the competitive inroads the cable industry has made against over-the-air broadcasters. First, an industry publication recently noted that the largest basic cable networks were individually worth between \$5 to \$6 billion, which compared favorably to the \$4 to \$5 billion value for any of the four broadcast networks.²³ Second, just yesterday, the President of NBC confirmed that the network

²² Broadcast Television in Multichannel Marketplace, 4 FCC Rcd. 3996, 3999 (OPP Working Paper No. 26, released June 27, 1991).

²³ Topping the list of basic cable networks was ESPN, which projects \$1.155 billion in 1998 total net revenue, including \$420 million in advertising revenue and \$580 million in licensing fees. Cable Program Investor, Paul Kagan Associates, February 24, 1998. Disney now uses ESPN as

(continued...)

and its multi-billion dollar parent, General Electric, will pursue an alliance or merger with a cable network (and its dual income stream of subscriber fees and advertising revenues) because "the broadcast-TV business -- with its reliance on advertising as the only major source of revenue -- is no longer sustainable."²⁴ The success of basic cable networks could hardly have been predicted at the time the Rule was adopted and represents a fundamental shift in the way Americans receive video programming. This competition needs to be recognized by liberalizing the Rule in order to ensure that the over-the-air industry can continue to compete in today's marketplace.

The Commission recognized its duty to calibrate its regulations in response to changed market circumstances and the impact of new technologies 14 years ago when it liberalized the so-called Seven Station Rule that limited the number of AM, FM and television stations a single entity could own nationally, finding that "we would be derelict in our responsibilities to the public interest were we to ignore the developments now occurring, and those evidently on the way."²⁵ The pace of change since 1984 has increased exponentially. What is on the way today is the complete convergence of media, with the introduction this year of a single device that delivers not only over-the-air television and cable programming, but also the Internet, with its online newspapers, magazines, streamed video programming and other traditional print media. As with cable, nothing will distinguish over-the-air programming from Internet programming, and the erosion of the over-the-air audience will only be exacerbated. By taking steps to permit the over-

²³ (...continued)

the flagship of its sports programming interests, a decision that recognizes the tremendous brand recognition that ESPN has developed.

²⁴ "NBC President Says Alliance Is More Likely," The Wall Street Journal, July 20, 1998 at B2.

²⁵ 1984 Multiple Ownership Report, 100 F.C.C. 2d at ¶ 40.

the-air industry to compete on a more level playing field with these new technologies, the Commission will ensure that the highest quality programming continues to be available to all Americans, not just those who are able to afford it.

Nowhere is the need for the elimination or liberalization of the Rule more obvious than in the largest media markets. The remainder of this section highlights competition in Chicago, where Tribune owns a grandfathered newspaper-TV-AM combination, and South Florida, where Tribune owns, at least temporarily, a newspaper-TV combination. These markets are discussed in detail to illustrate in real terms the competitive conditions in the larger U.S. media markets. As detailed below, competition in these markets is intense, involving large, well-financed media companies, many of whom control multiple outlets to the viewing/listening audience. This competition belies any suggestion that Tribune's existing newspaper-television combinations could somehow dominate these markets, either economically or in the marketplace of ideas.

A. The Chicago Marketplace.

In Chicago, Tribune indirectly owns and operates WGN-TV, Channel 9, WGN(AM), ChicagoLand Television News ("CLTV"), a 24-hour cable news channel, and publishes the Chicago Tribune as well as Éxito, a weekly Spanish-language newspaper. A review of the Chicago competitive landscape reveals intense competition involving virtually every major media player in the country, including TCI, CBS/Westinghouse, General Electric/NBC,

Disney/ABC and Fox.²⁶ Moreover, the Chicago marketplace represents a microcosm of the developments in the media marketplace since the Rule was adopted and vividly illustrates what an anachronism the Rule is today. Virtually every one of these major media competitors directly or indirectly controls several other media outlets to the viewer/consumer -- combinations that would not have been approved under the Commission's mindset in 1975.

Television Competition: WGN-TV competes with the VHF owned and operated affiliates of CBS, NBC and ABC and the UHF owned and operated affiliate of Fox Television. These stations have well-established news departments that collectively produce 105 hours of local television news programming each week. In addition, each of the networks owns several other media outlets:

CBS/Westinghouse: In addition to owning WBBM-TV, Channel 2, which tied for third in audience ratings among television stations in the market, CBS also owns 5 FM and 3 AM radio stations in the Chicago market.²⁷ WBBM-TV had a total day, total television household share of 9 and an average weekly circulation of 76 in May 1998. The CBS radio stations include WBBM(AM) and WMAQ(AM), the two 50,000 watt all-news stations in Chicago. CBS thus controls a substantial local news franchise in the market. It airs 27.5 hours per week of local news and 20 hours per week of national news programming on WBBM-TV in addition to the multiple hours per week of national and local news programming on each of its news radio stations.

NBC/General Electric: In addition to owning WMAQ(TV), Channel 5, the second ranked television station that airs 23.5 hours of local news and 19 hours of national

²⁶ AT&T recently announced its intention to acquire TCI, thus creating an even more powerful presence in the Chicago market with the ability to provide even more comprehensive telecommunications services to consumers.

²⁷ CBS received a permanent waiver to own WBBM(TV) plus 2 AM (both 50,000 watt all news stations) and 2 FM stations. Stockholders of Infinity Broadcasting Corporation, 12 FCC Rcd. 5012 (1996). It received a temporary waiver to own the additional 3 FM and 2 AM stations conditioned on the outcome of the Commission's review of the one-to-a-market rule. Id. ¶¶ 95, 97.

news programming each week, NBC also programs and has significant ownership interests in two other news outlets to Chicago viewers -- CNBC and MSNBC -- which are both carried on virtually all of the cable systems serving the Chicagoland area.²⁸ This combination of interests also gives NBC a substantial news franchise in the market. WMAQ earned a total day, total television household share of 17 with an average weekly circulation of 88 in May 1998.

ABC/Disney: In addition to owning WLS-TV, Channel 7, the number 1 television station in the market that broadcasts 27.50 hours of local news and 19.50 hours of national news programming each week, ABC/Walt Disney also owns one FM and 2 AM stations in the market, including WLS-AM, a popular 50,000 watt talk station. WLS-TV had a total day, total television household share of 18 with an average weekly circulation of 87 in May 1998.²⁹ In addition, Disney also owns the ESPN family of basic cable networks, which are carried on cable systems throughout the area.

Fox/News Corp.: In addition to owning WFLD, Channel 32, the fifth ranked television station that broadcasts 22 hours of local news programming each week, Fox also owns several other outlets, including the Fox News Channel and the FX basic cable network. WFLD had a total day, total household share of 8 and an average weekly circulation of 89 in May 1998. Fox also has a significant ownership interest in Fox Sports Chicago, one of several regional sports programming channels it has ownership interests in across the country.³⁰ Fox Sports Chicago earned a total day, total household share of 2 with an average weekly circulation of 37 in May 1998. These local or regional cable sports channels, driven by the dual income stream of license fees and advertising revenues, have been increasingly successful in securing local sports programming rights.

In addition to these four network owned and operated stations, the Chicago television market has several other significant competitors, including several owned by well-financed group operators. These other stations include:

WTTW, Channel 11: The country's most watched local PBS station, WTTW airs 10 hours of local news plus 12.5 hours of national news programming each week.

²⁸ NBC's cable networks are programmed to direct viewers to switch to their local NBC affiliates for regularly-scheduled local newscasts.

²⁹ ABC recently announced plans to acquire WTAU(AM), Zion, Illinois, thus increasing its radio holdings to 1 FM and 3 AMs.

³⁰ Fox Sports Chicago is a partnership between Fox and TCI/AT&T, which controls approximately 85 percent of the Chicagoland cable market.

WTTW had a total day, total household share of 5 with an average weekly circulation of 62 in May 1998.³¹

WSNS, Channel 44: Owned by Telemundo and its two well-financed minority partners -- TCI (through Liberty Media) and Sony -- the station is affiliated with the Telemundo Spanish-language network and airs 7 hours of local news and 15 hours of national news programming each week. WSNS registered less than a 1 share but did have an average weekly circulation of 9 in May 1998.

WCFC, Channel 38: Recently acquired by Paxson Communications, the station will air the launch of the new Pax Net Network in September 1998. The station registered less than a 1 share but did have an average weekly circulation of 12 in May 1998.

WGBO, Channel 66: Owned by Univision and affiliated with its Spanish-language network, WGBO had a total day, total household share of 3 with an average weekly circulation of 11 in May 1998.

WPWR, Channel 50: Owned by Newsweb, a well-financed broadcast group owner, and affiliated with the UPN network, WPWR had a total day, total household share of 6 and an average weekly circulation of 61 in May 1998.

WCIU, Channel 26: Owned by Weigel Broadcasting, another group operator, WCIU had a total day, total household share of 3 and an average weekly circulation of 45 in May 1998.

For its part, WGN-TV, an independent station broadcasting the programming of the WB network, had a total day, total household share of 9 and an average weekly circulation of 77 in May 1998. This placed it in a tie with WBBM for third in a highly competitive market where five stations had shares of 8 or better. Four commercial UHF stations that commenced operations after the Rule was adopted earned less than a 1 share in May 1998 -- WCFC, channel 38; WWTO Channel 35; WEHS, Channel 60; and WJYS, Channel 62.

³¹ There are two other PBS stations assigned to the Chicago DMA. These stations, WYCC, Channel 20 and WYIN, Channel 56, registered less than a 1 share in May 1998.

This review of the television competitors in the market by itself illustrates that Tribune's newspaper-AM-TV combination poses no threat to competition or diversity. Not counting WGN-TV, there are six local television news departments producing 122 hours of local news programming each week. Virtually all of the major players control multiple programming outlets to Chicago viewers, including national cable news channels and/or local radio stations. These combinations rebut any suggestion that Tribune could somehow dictate or control the marketplace of ideas in Chicago. Finally, as demonstrated by the May 1998 ratings, WGN-TV clearly is far from dominant in the television market.

Cable Television Competition: Any discussion of cable television competition in the Chicago DMA begins and ends with Tele-Communications, Inc. ("TCI"). More than any other cable MSO, TCI is the best example of the ownership flexibility enjoyed by the cable industry -- flexibility that has permitted the cable industry to pursue efficient ownership combinations that enhance the industry's ability to compete for the most popular programming, audience share and advertising revenues.

TCI has parlayed this opportunity into an incredible web of ownership interests, including interests in the following cable networks (through its Liberty Media subsidiary), most of which are offered to its subscribers in the Chicago area (with estimated ownership percentages in parentheses).³²

Bay TV (49 percent)*

³² The cable networks TCI does not offer in the Chicagoland are marked with an asterisk.

BET and Black Entertainment Television (22 percent)
 BET - Movies/Starz 13 (81 percent)
 Court TV (33 percent to increase to 60 percent)
 Discovery Communications (49 percent)
 including the Discovery Channel, The Learning Channel, Animal Planet, the Travel Channel
 E! Entertainment Television (10 percent)
 Fit TV (50 percent)*
 Fox Sports Chicago (50 percent shared with Fox)
 FX (50 percent)
 Health TV (100 percent)*
 Kaleidoscope (12 percent)*
 Recovery Channels (50 percent)*
 Odyssey (49 percent)
 Outdoor Life (17 percent)*
 QVC Inc. (43 percent)
 Speedvision (17 percent)*
 Star TV (3.75 percent)*
 USA Networks (18.6 percent)
 Time Warner (10 percent), which covers interests in all the Turner cable networks, including CNN, Headline News, TBS, TNT, Turner Classic Movies, The Cartoon Network, CNNfn, CNN/SI, and CNN International, as well as HBO and Cinemax.³³

Through Liberty Media, TCI also owns a 50 percent interests in the Telemundo Spanish-language over-the-air network as well as a 4.95 percent voting and a 20 percent non-voting interest in Telemundo's broadcast stations located throughout the country.

TCI has also used this flexibility to integrate horizontally by swapping systems with other operators to form regional clusters. TCI uses these clusters to compete more

³³ "Liberty Has Money to Spend," Electronic Media, June 29, 1998.

effectively with over-the-air broadcasters for local advertising revenue. TCI has been very active in swapping systems across the country. This has led to TCI's recent announcement that by the beginning of 1999, TCI will have a cluster in the Chicago market controlling 84.2 percent of the DMA's cable subscribers, which represents over 50 percent of the television households in the market. TCI's systems in the Chicago area offer an average of approximately 80 channels of programming. TCI's cluster in Chicago will allow it to offer significant market coverage to local advertisers on those 80 different channels of sports and entertainment programming. Moreover, TCI recently embarked on the deployment of new digital set-top boxes that will substantially increase its channel capacity in the market -- thereby increasing its local advertising capacity.

TCI has also invested resources in developing navigator technology that helps cable viewers locate programming of interest on the cable system. These electronic program guides are expected to become more and more valuable in the digital world when several hundred channels are expected to be available. In fact, TCI just acquired the TV Guide magazine and will re-brand its current preview channel as the TV Guide channel. "Prevue of TCI's future: The TV Guide Channel," Electronic Media, June 18, 1998. TCI plans to expand the information available to viewers on its new TV Guide channel and by doing so, intends to play an even stronger role in influencing viewer choices in the market.

At the time the Commission adopted the Rule in 1975, no one could have predicted that a single entity could assemble the web of interests that TCI has acquired. In Chicago, TCI is clearly a force to be reckoned with, competing (directly or indirectly) on every level in the media marketplace, from local advertising revenue to local sports programming rights

to the exhibition rights of the most popular entertainment programming. TCI's amazing collection of interests in the Chicago market, combined with the major television competitors described above, conclusively establish that Tribune's ownership of a newspaper/AM/TV combination poses no threat to diversity or competition in the market.

In February 1998, seventeen basic cable networks earned at least a 1 share of total-day, total-television household viewing in the Chicago DMA. These networks, which outperformed four commercial UHF stations in the DMA that commenced operation after the Rule was adopted, included: A&E (2 share); American Movie Classics (1); Comedy Central (1); Discovery (1); ESPN (1); Family Channel (1); Fox Sports Chicago (1); FX (1); Lifetime (2); MTV (1); Nickelodeon (3); Sci-Fi (1); The Learning Channel (1); TNT (2); Cartoon Network (2); USA (2) and TBS (2). Nielsen Media Research, Chicago DMA Total Activity Report (February 1998). In addition, pay cable networks accounted for 6 share points in the February 1998 sweeps, including a 3 share for HBO. Id. These results confirm the competitiveness of the cable industry and the outdated nature of the Rule -- 17 basic cable networks out-performed 4 different UHF stations, yet the Rule completely ignores this competition and treats each UHF station as the equivalent of Disney's number 1 rated WLS-TV.

Newspapers: The Chicago market also features intense newspaper competition that includes two metropolitan dailies as well as a number of successful suburban newspapers. The market is served, in whole or in part, by 10 daily newspapers. These daily newspapers include two published by the Hollinger company, a well-financed newspaper publisher. The daily circulation of these two papers, the Chicago Sun Times and the Daily

Southtown, gives the Hollinger Company the same 33 percent share of the daily circulation market earned by the Chicago Tribune.³⁴

The market also features several strong suburban dailies including the Daily Herald, which accounts for 8 percent of the daily circulation in the market, and four dailies and one weekly published by the Copley Group. The combined daily circulation of these papers, which include the Aurora Beacon, the Joliet Herald, the News-Sun, the Elgin Courier, and the Naperville Sun (weekly), accounts for 7 percent of the daily circulation in the market. This collection of newspaper competitors, competitors who serve as economic and editorial substitutes for the Chicago Tribune, again refutes any suggestion that Tribune's ownership combination poses a threat to the competition or diversity in this market.

In addition, the Chicago market is served by over one hundred weekly newspapers. These newspapers, which typically feature focused local news coverage and separate editorial pages, have a weekly circulation in excess of 2.4 million in the six-county Chicago market. Three of these weekly newspapers, the Pioneer Press, the Star and the Naperville Sun, have a combined circulation equal to approximately 15 percent of the market's daily circulation volume. This collection of weekly newspapers, which typically provide very localized coverage of communities within the market, provide yet another important source of news and information in the market.

³⁴ All reported circulation figures are from 1997 Audit Bureau of Circulations.

Radio Stations: As of December 1996, there was a total of 125 commercial and non-commercial radio stations in the Chicago television metro market.³⁵ These 125 stations were owned, operated and controlled by 91 separate entities or individuals. These stations collectively broadcast over 40 different formats, including ethnic adult rock, classic rock, alternative rock, progressive rock, jazz, adult contemporary, children's programming, oldies, country, Spanish, Polish, contemporary Christian, classical, blues and religious. In addition, there is a variety of non-music formats serving the markets including two all-news stations (both owned by CBS/Westinghouse), 3 sports-talk stations, 1 talk station, 2 talk-music stations, 1 news talk station, 1 urban talk station and 1 ethnic/lesbian-gay station. The radio advertising market is dominated by two large group owners, CBS/Westinghouse and Chancellor Media, which collectively own 10 FM and 5 AM stations and control approximately 70 percent of the market's radio advertising revenue.

Internet: Finally, Internet penetration in the market is estimated at approximately 30 percent as of the beginning of 1998.³⁶ The Commission has already recognized that the Internet "puts a vast universe of information and opinions on local, national, and world issues at the user's fingertips, and it is accessible within the home."³⁷ The Internet most certainly competes with over-the-air television for the attention of viewers and, as the Commission is aware, is already an alternative delivery mechanism used for entertainment programming. The

³⁵ Stockholders of Infinity Broadcasting Corp., 12 FCC Rcd. 5012, ¶ 31 (1996).

³⁶ Scarborough Report, Chicago, February 1997 - January 1998.

³⁷ Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rule Making ("Television Further Notice"), 10 FCC Rcd. 3524 ¶ 64 n. 89 (1995).

Internet can also be easily customized by the user to provide incredibly detailed local information pages from weather to traffic to school lunch information maintained by an ever growing list of local organizations, from governments to small and large local businesses.

Tribune's Operation of the Commonly-Owned Entities: The Chicago Tribune, WGN-TV and WGN(AM) do not speak with one voice in the market. Each is run as a separate, stand-alone business unit with decisions regarding programming and editorial policy, including news and public affairs programming, left to the discretion of the individual business unit managers. As indicated in the attached declaration of Jack Fuller, the President of Tribune Publishing, Tribune allows the operators of each media franchise to hire their own professional journalists and to select programming or content that is appropriate for their audience.

Declaration of Jack Fuller, ¶ 3 (attached hereto as Attachment 1).

In sum, as the Commission recognized in approving a permanent one-to-a-market waiver permitting CBS/Westinghouse to own 2 AMs (both 50,000-watt all-news stations), 2 FM's and a VHF television station, there is "robust competition and diversity" in the Chicago media market.³⁸ The market features: (i) intense competition between major media companies that each control, directly or indirectly, multiple outlets to the home, (ii) TCI and its dominant cable cluster, (iii) real newspaper competition, (iv) numerous independently owned radio stations offering a wide variety of formats, including several public affairs (news/talk) options and (v) significant and growing Internet penetration. In this marketplace setting, the FCC's concerns

³⁸ Stockholders of Infinity, at 5052 ¶ 88.

about Tribune's common TV-AM-newspaper ownership seem as outdated as the Rule itself. This combination clearly presents no meaningful threat to "robust" competition and diversity in the Chicago market.

B. The South Florida Marketplace.

In South Florida, Tribune owns the Sun-Sentinel, a daily newspaper published in Fort Lauderdale and, pursuant to a temporary waiver of the Rule, WBZL(TV) (formerly WDZL), Channel 39, Miami, Florida.³⁹ In August 1996, Tribune submitted detailed documentation of the competitive landscape in this market, which includes Dade, Broward and Palm Beach counties.⁴⁰ This competition, which has only increased in the ensuing 20 months, clearly refutes any suggestion that Tribune's television-newspaper combination could exercise any form of market power or monopolize the marketplace of ideas.

Television Competition: The South Florida television market is intensely competitive. Its two largest counties are part of the Miami-Ft. Lauderdale DMA which in 1994 had the lowest HHI of any of the top 50 television markets based on average all-daypart ratings.

Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules, Report and

³⁹ Stockholders of Renaissance Communications Corp., 13 FCC Rcd. 4717 (MMB, March 6, 1998).

⁴⁰ Unless otherwise noted, the source for the South Florida market information discussed herein is Transferee's Exhibit C-3, "Request for Permanent Waiver of the Newspaper-Broadcast Cross-Ownership Rule, filed with FCC Form 315, Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License," filed by Renaissance Communications Corporation ("Renaissance") and Tribune Company on August 1, 1996, which is incorporated here by reference.

Order ("PTAR Report and Order"), 11 FCC Rcd. 546, Table D-1. The Miami-Ft. Lauderdale DMA is currently the 16th largest DMA in the country in terms of permanent residents and the 9th largest in terms of advertising revenue.⁴¹

WBZL is an independent UHF station that broadcasts programming distributed by the WB Network. WBZL competes against a number of well-financed stations owned by experienced broadcast groups, including VHF affiliates of the Big-Four networks. Most of these stations have well-established news departments that produce multiple hours of local news programming. The competing stations include:

- WPBT, channel 2: One of Miami's two PBS stations that airs the standard range of PBS news and informational programming, this station commenced operation in 1955. In November 1997, WPBT earned a total day, total television household share of 2, with an average weekly circulation of 37, results that placed it ninth among television stations assigned to the DMA.
- WFOR, channel 4: Owned by CBS/Westinghouse, this station, which ranked fourth in November 1997 audience ratings, commenced operation in 1949 and currently airs 29 hours a week of local news programming. In November 1997, it earned total day, total television household share of 10, with an average weekly circulation of 76.
- WTVJ, channel 6: Owned by NBC (and its parent, General Electric), this station, which ranked third in audience ratings, commenced operations in 1967 and currently airs 21 hours a week of local news programming. In addition to WTVJ, NBC also has ownership interests in and programs two cable channels with significant penetration in the market: CNBC and MSNBC. In November 1997, WTVJ earned a total day, total television household share of 11 with an average weekly come of 75. CNBC itself earned a total day, total television household share of 1 with an average weekly circulation of 7 while MSNBC had an average weekly circulation of 2.

⁴¹ The difference in the size of the rankings is attributable to several factors, one of which is the statistical exclusion of non-full time residents by A.C. Nielsen from its population count.

- WSVN, channel 7: Owned by Sunbeam Television Corp., a well-financed group owner, this station, which ranked fifth in audience ratings, is an affiliate of the Fox network and commenced operations in 1956. It boasts one of the highest-rated, prime-time news broadcasts of any Fox affiliate and currently airs 38.5 hours per week of local news programming. In November 1997, WSVN earned a total day, total television household share of 10 with an average weekly circulation of 78.
- WPLG, channel 10: Owned by the Post-Newsweek Company, this station, which earned the highest ratings in November 1997, is affiliated with the ABC network and commenced operating in 1961. It currently airs 17 hours per week of local news programming. In November 1997, WPLG earned a total day, total television household share of 13 with an average weekly circulation of 80.
- WLTV, channel 23: Ultimately owned by Univision and affiliated with its Spanish-language network, this station, which ranked second in audience ratings, commenced operating in 1967 and currently airs 7 hours per week of local news programming. In November 1997, WLTV earned a total day, total television household share of 12 with an average weekly circulation of 31.
- WBFS, channel 33: Ultimately owned by Viacom and affiliated with its UPN, this station, which tied for sixth in audience ratings, commenced operating in 1984 and does not currently air local news programming. In November 1997, WBFS earned a total day, total television household share of 7 with an average weekly circulation of 61.
- WSCV, channel 51: Ultimately owned by Telemundo and its two minority partners -- TCI and Sony, the station is affiliated with the Telemundo Spanish-language network and ranked eighth in audience ratings. It commenced operations in 1968 and currently airs 5 hours per week of local news programming. In November 1997, WSCV earned a total day, total television household share of 3 and an average weekly circulation of 23.

Three other UHF commercial stations assigned to the Miami DMA that provide coverage to the Miami-Ft. Lauderdale area registered less than a 1 share in 1997. These stations, WAMI, WPXM and WHFT, all commenced operation after the Rule was adopted. No fewer than 12 basic cable networks (and 1 pay cable network) earned higher total day, total television household shares than these three commercial over-the-air stations.

Fort Lauderdale and Broward County, the home county of the Sun-Sentinel, also receive over-the-air television service from stations licensed to communities in Palm Beach County. Station WFLX (channel 29), a Fox affiliate licensed to Malrite Communications Group, provides Grade A service to Fort Lauderdale and is carried on most Broward County cable systems. Over ten percent of WFLX's total recorded viewing in 1996 came from the Miami DMA. Similarly, WPTV (channel 5), an NBC affiliate licensed to Scripps Howard Broadcasting, and WPEC (channel 12), a CBS affiliate licensed to Freedom Communications, also provide Grade A service to Fort Lauderdale and had in excess of 4 and 2 percent respectively of their total recorded viewing in July 1997 from the Miami DMA.⁴²

This combination of stations presents an incredibly competitive local television market -- one that does not have a single dominant station and collectively produces and airs over 80 hours of local news programming each week. No fewer than five stations earned total day, total television household shares of 10 or higher in 1997. For its part, WBZL earned a total day, total household share of 7 with an average daily circulation of 65. This result placed it in a virtual tie for sixth place (with WBFS) behind all four VHF network affiliates and the Spanish-language Univision station and only slightly ahead of one of the two PBS stations in the market.

⁴² A number of the stations assigned to the Miami-Ft. Lauderdale DMA are carried on cable systems in Palm Beach County. These stations collectively earn as much as 25 percent of the recorded viewing of various dayparts in the southern half of Palm Beach County.

Recent developments only underscore the intense competition in the local Miami television market. First, WLVT, the Spanish-language station owned by Univision, placed first in the February and May 1998 Nielsen sweeps for the Miami-Ft. Lauderdale DMA, surpassing all six English language stations. See "Spanish TV Nets a Win; Univision Tops Miami's Nielsen Ratings," Washington Post, April 24, 1998 at A1. WLTV's February sweeps win represented the first time that a station broadcasting in a language other than English in a major U.S. city finished with the highest sign-on to sign-off ratings in a Nielsen month long sweeps period. Id. In explaining these results, the article noted that these Miami ratings illustrated an important national trend, a trend Tribune urges the FCC to recognize in this proceeding: "a once-simple television culture, overwhelmingly dominated by three networks -- CBS, ABC and NBC -- has splintered into scores, even hundreds of pieces." Id.

Second, two of the stations that did not attract enough audience to earn a 1 share in the Nielsen ratings could change that status soon. First, WAMI (formerly WYHS) which commenced operations in 1988 on channel 69, recently dropped its Home Shopping Network format to debut "City Vision," a new local lifestyle television format that is the brainchild of former Fox Television pioneer Barry Diller. See "Wacky WAMI in Miami, Edgy Diller station goes hyper-local," Electronic Media, June 15, 1998 at 4. The station will feature a new local newscast described as "The New York Post [of local newscasts]," which one USA Broadcasting official described as follows: "[i]t's not the news, it's what people talk about as news." Id. City Vision will also feature a variety of locally oriented programming including Barcode, a dance show that features DJs at local clubs and the music they select; Ocean Drive, a video version of a local South Beach fashion magazine; and live cameras at bus stops and other locations throughout

the Miami area. See "Miami's WAMI Beams Unique Local Shows Toward a Fragmented Audience," Sun-Sentinel, June 14, 1998 at 1F. The new format has definitely caught the attention of national and local advertisers -- the station is already airing some direct response and paid programming -- and internal USA Broadcasting estimates apparently project that the station will earn a 5 share within 18 months of the launch of City Vision. Id.

Third, WPXM, which operates on channel 35 and commenced operations in 1992, was recently acquired by Paxson Communications and will debut the new Pax Net Network in September 1998. Pax Net, which will feature off-network programming including "Touched by an Angel," and "Dr. Quinn, Medicine Woman," appears likely to further splinter the audience ratings in the already competitive market.

Tribune submits that a review of competition in the South Florida television market demonstrates the absurdity of the suggestion that common ownership of WBZL and the Sun-Sentinel creates or could lead to market dominance. This local television competition, which includes 4 UHF stations that were not operating at the time the rule was adopted (including WBZL itself), has led to a widely dispersed distribution of audience driven by the great variety of programming options available -- options that continue to increase. It is impossible to imagine how the common ownership of WBZL and the Sun-Sentinel could harm such a competitive landscape.

Radio Stations. As of August 1996, the Miami-Ft. Lauderdale market was served by a total of 69 radio stations, 49 of which were separately owned. At least 15 of these

stations (approximately 22 percent) signed on after the Commission adopted the Rule in 1975. These stations collectively broadcast over 30 different formats, including jazz, Christian pop, Latin pop, religious, alternative rock, classic rock, oldies, country, Caribbean and public radio. In addition, there is a variety of non-music formats serving the market, including 3 talk stations, 3 news-talk stations, 2 Spanish news talk stations, 2 financial-talk stations, 1 talk-variety station, 1 motivational-health-talk station, 1 Spanish talk station and 1 news-sports-talk station. Sixty percent of the radio advertising market is split by the following four large group owners: Clear Channel (which owns 5 FM's and 3 AM's), Cox Communications (which owns 2 FM's), Beasley Broadcast Group (which owns 2 FM's and an AM) and Jefferson-Pilot (which owns 2 FM's). The Heftel Broadcast Group, which owns four Spanish-language stations (2 FM's and 2 AM's), separately accounts for the overwhelming majority of Spanish-language advertising billings, which account for approximately 30 percent of the radio advertising revenue in the market.

Cable Television Systems. As of the end of 1997, cable penetration in Broward County was 81 percent. Cable penetration in Dade County was 63 percent. Cable penetration in Palm Beach County was 84 percent. 1997 A.C. Nielsen DMA summary. As of August 1996, Dade and Broward Counties were served by 9 and 11 cable companies, respectively, that provided a minimum of 39 channels and a maximum of 81 channels, with an average of 62 channels of programming. Palm Beach County is served by 15 cable television systems, seven of which carried WBZL. These cable systems had a minimum of 36 channels and a maximum of 71 channels, with an average of 45 channels of programming. Since August 1996, a significant amount of cable system trading has occurred. This trading culminated in the recent announcement by MediaOne (formerly Continental Cablevision/US West) that, following a swap

of systems with TCI in Chicago, MediaOne will have a cluster in the Miami DMA covering approximately 642,000 cable subscribers representing 46 percent of the DMA's television households. This cluster, which will be completed in late 1998 or early 1999, clearly will enhance MediaOne's ability to compete with local television stations for advertising revenue.

In 1997, eleven basic cable networks, including Nickelodeon, ESPN, CNN, A&E, USA and TNT, and 1 pay cable network (HBO) earned a 1 or greater share of total day, total television household viewing in the Miami DMA. 1997 A.C. Nielsen Diary County/Coverage Study, Miami DMA. As noted above, these networks each exceeded the shares of three commercial over-the-air stations assigned to the Miami DMA. Collectively, pay and basic cable networks accounted for twenty percent of the total day, total television household viewing in the Miami DMA. Id. No fewer than 35 basic or pay cable networks received reportable audience viewing during 1997. Id.

Newspapers. The market is served by six local daily newspapers with significant circulation overlap, five of which are separately owned. In addition to Tribune, these companies include two other well-financed, national media companies, Knight-Ridder and Cox Enterprises, and two smaller, regional or local companies, Community Newspaper Holdings, Inc. and Diario Las Americas. These six newspapers and their 1997 daily circulations are:

<u>Daily Newspaper</u>	<u>Dade</u>	<u>Broward</u>	<u>Palm Beach</u>	<u>Total</u>
Sun-Sentinel	2,622	192,600	64,169	259,391
Miami Herald	244,000	94,800	6,449	345,249
Palm Beach Post	--	354	150,281	150,635
Boca Raton News	--	264	15,300	15,564
El Nuevo Herald	101,100	--	--	101,100
Diario Las Americas	57,028	--	--	57,028

As these figures demonstrate, the Sun-Sentinel is not the dominant newspaper in the South Florida market. In fact, the Sun-Sentinel faces significant competition from the region's dominant newspaper, the Miami Herald, even in its home county, Broward County.

As of August 1996, the market was also served by over 20 publishers of weekly community newspapers. These publishers collectively published well over 100 weekly newspapers for different communities within the South Florida market. These newspapers typically feature super-local coverage of a particular community, have small but separate news staffs and many also have editorial pages. As of August 1996, these weekly newspapers collectively had a circulation of at least 967,547 in Dade County, at least 1,090,772 in Broward County, and at least 412,000 in Palm Beach County -- totaling more than 2.5 million people in the South Florida market. As of 1996, the South Florida market also was home to an extensive number of weekly and monthly periodicals, with in excess of 250 different magazines, community newspapers, specialty publications, and other consumer periodicals published in the market.

Competitive Market Analysis. In analyzing the impact of Tribune's ownership of WBZL and the Sun-Sentinel in the South Florida market, Tribune submits that the relevant advertising product market includes television stations, radio stations, cable television